

- “2. Whether claimant submitted sufficient evidence to warrant a modification of the Agreed Award previously entered herein, which Award granted future medical treatment upon proper application, such that claimant may seek such treatment without first obtaining the consent of the respondent or an order of the court.
- “3. Whether the Administrative Law Judge properly awarded claimant his entire request for attorney fees.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds the Order for Medical Treatment post-Award entered by the Administrative Law Judge should be affirmed.

The parties in this matter entered into an agreed Award on June 8, 1994. As part of that Award claimant was granted future medical upon application to the Director. On several occasions claimant attempted to obtain additional medical treatment and medication for the injury suffered which was the basis for this Award. Written requests to respondent were ignored until, on three separate occasions, claimant was forced to push this matter almost to preliminary hearing. Respondent argues it was timely in its responses to these requests but a review of the record indicates weeks and at times months went by during which time claimant's attempts to obtain medical treatment and medication for his ongoing condition were delayed.

The medical treatment ordered by the Administrative Law Judge includes medication and an exercise program which had been recommended by the treating physician, Dr. Sergio Delgado. In so ordering the Administrative Law Judge has simply guaranteed that claimant can receive medical treatment and medication in a timely fashion without unnecessary delay. The Administrative Law Judge's Award of medical treatment would normally not be considered jurisdictional and the Appeals Board would not take jurisdiction of this issue since it does deal with medical treatment ordered under a preliminary hearing Order pursuant to K.S.A. 44-534a. However, in this case the issue raised by the respondent was not whether the Administrative Law Judge had the right to order ongoing medical care but whether the Administrative Law Judge had the authority to contradict the running award entered into by the parties. The Appeals Board finds the Administrative Law Judge does have this authority under K.S.A. 44-534a and as such the ordering of the monitoring of the claimant's medication and exercise program are found to be proper under the circumstances.

Respondent's contention that the Administrative Law Judge, for some reason, awarded claimant medical treatment which had not been recommended is not supported by the record. Recommended medication for claimant's ongoing problem as well as the exercise program recommended by Dr. Delgado are discussed in the medical evidence contained in the record and respondent's objections are without merit.

K.S.A. 44-536(g) grants an attorney entitlement to reasonable attorney fees when rendering services subsequent to the ultimate disposition of the initial and original claim and in connection with an application for review and modification, a hearing for additional medical treatment or otherwise. Claimant's attorney was required on several occasions to send letters, including certified letters, and file applications for preliminary hearings in order to obtain the medical care necessitated by claimant's injury. The Appeals Board finds the request for attorney fees by claimant's attorney was reasonable and pursuant to K.S.A. 44-536(g), the award of attorney fees in the amount of \$787.50 should be, and is hereby, affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order for Medical Treatment post-Award entered by Administrative Law Judge Floyd V. Palmer dated October 8, 1996, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jeff K. Cooper, Topeka, KS
Gregory D. Worth, Lenexa, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director